



DEPARTMENT OF THE ARMY
 U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
 CORPS OF ENGINEERS
 P.O. BOX 59
 LOUISVILLE, KENTUCKY 40201-0059
 FAX: (502) 582-5072

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July 16, 1997

Operations Division
 Regulatory Branch (South)
 ID No. 199501367-rjs

Memorandum for Coordinating Agencies

Subject: Pre-Discharge Notification Procedures

This office is currently reviewing an application submitted by:

Applicant: Peabody Coal Co., Lynville Business Unit (Peabody) at their Millersburg II North operation near Pigeon Creek, in Warrick County, Indiana. The area is also referred to as IDNR Permit No. S-00326. Peabody is requesting Nationwide authorization No. 21 (Surface Coal Mining) for this activity.

Project Description: Peabody as part of their IDNR Permit No. S-00326, have stated that the IDNR permit area includes 68 acres of jurisdictional wetlands. Approximately 50 acres would be disturbed. Of the 50 acres, only 4.59 acres would be in the actual surface mining area, and 23.6 acres would be for areas of surface disturbance in the proposed mining operation (silt basins, ditches, runoff from silt basins, levee etc.). An additional 21.07 acres would be in an area of temporary surface disturbance for a heavy equipment crossing.

A wetland delineation for this area was prepared by Mr. Hal Bryan of Eco-Tech Inc., and accepted by this office in 1996.

To minimize the impacts of the proposed coal mining operation, Peabody has redesigned the mining operation to avoid disturbing 190.6 acres of jurisdictional wetlands. This would include the core habitat area of the National Conservation agreement for the Northern Copperbelly water snake. The impacts to the wetlands that would be affected are also staggered over a period of 9 years.

As mitigation for this proposal, Peabody proposes both on and off-site mitigation. There would be 25.0 acres in the off-site mitigation area, and 40.08 acres of wetlands in the on-site area. The wetland types would be of a bottomland hardwood wetland (PF01E).

We are reviewing this proposal in accordance with Section 404 of the Clean Water Act. Notification of this action is in accordance with 33 CFR 330 Part C (13) of the Federal Register dated December 13, 1996, effective date February 11, 1997. To allow for a coordinated review by all agencies, we propose to commence the review period from July 21, 1997. If your agency has any substantive,

Subject: Pre-Discharge Notification Procedures

site-specific comments, you will have 5 calendar days from July 21, 1997, to contact this office by telephone or facsimile transmission, to inform us of your intent to submit comments. If so informed, we will wait an additional 10 calendar days for receipt of your comments in this office by close of business on the 10th day. Your comments should be submitted to the above address, ATTN: CEORL-OR-FS, or by Facsimile (502) 582-5072.

If you have any questions, please call me at (502) 582-5452. Any correspondence on this matter should refer to our ID No. 199501367-rjs.

Sincerely,



Ronny J. Sadri
Project Manager
Regulatory Branch

Enclosures

PRE-DISCHARGE NOTIFICATIONADDRESSES FOR COORDINATING AGENCIES

Mr. David Schulenberg
Chief, Wetlands Regulatory Section
WQW-16J
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Mr. Dave Hudak
Field Supervisor
U.S. Department of the Interior
Fish and Wildlife Service
620 South Walker Street
Bloomington, Indiana 47403-2121

Mr. Steve Jose
Division of Fish and Wildlife
Department of Natural Resources
402 West Washington Street, Room 273
Indianapolis, Indiana 46204

Mr. David Phillips
Division of Reclamation
Indiana Department of Natural Resources
Rural Route 2, Box 129
Jasonville, Indiana 47438

ADDITIONAL ADDRESS

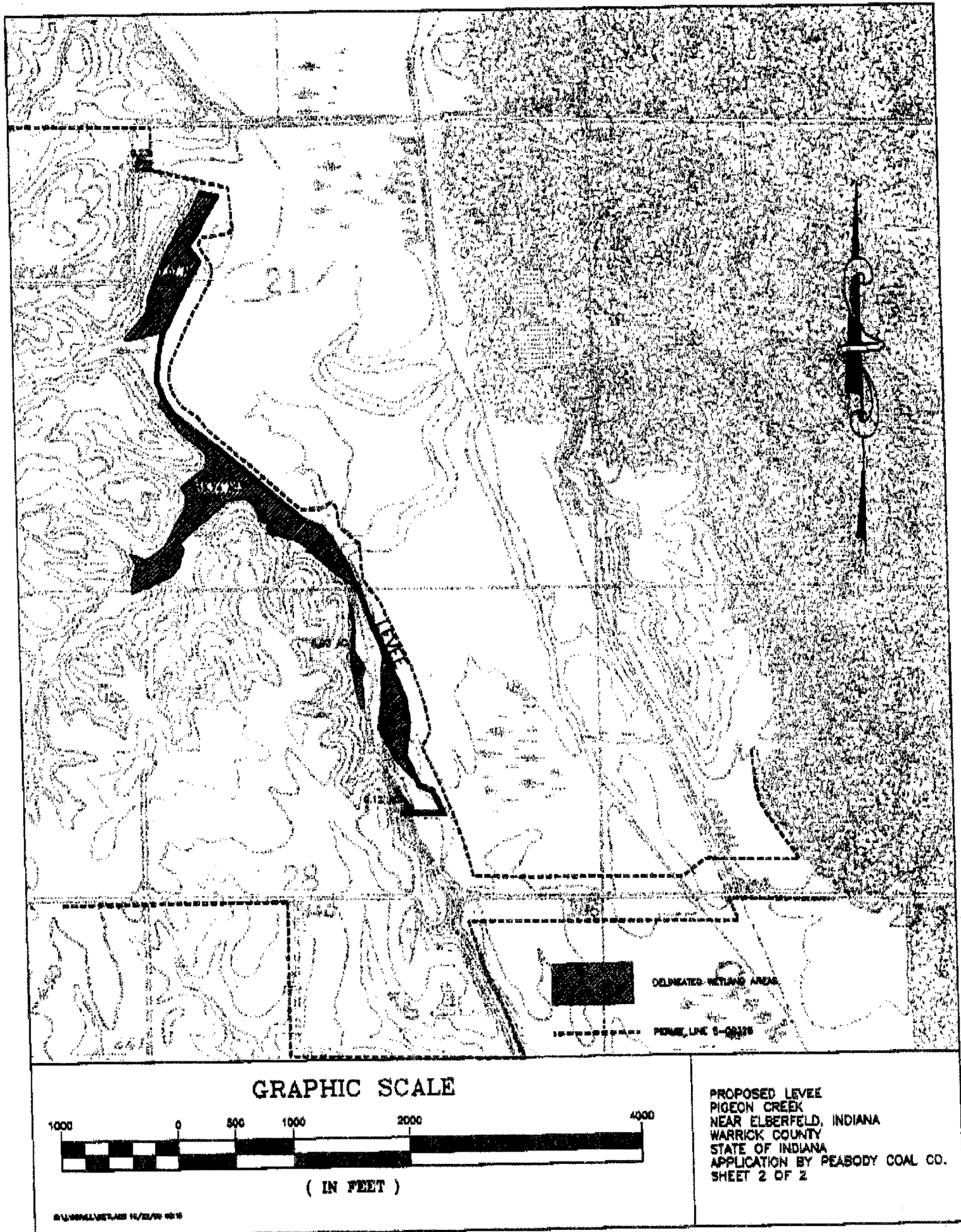
Mr. Joe M. Ellis
Peabody Coal Co.
Lynville Business Unit
P.O. Box 7
Lynville, Indiana 47619

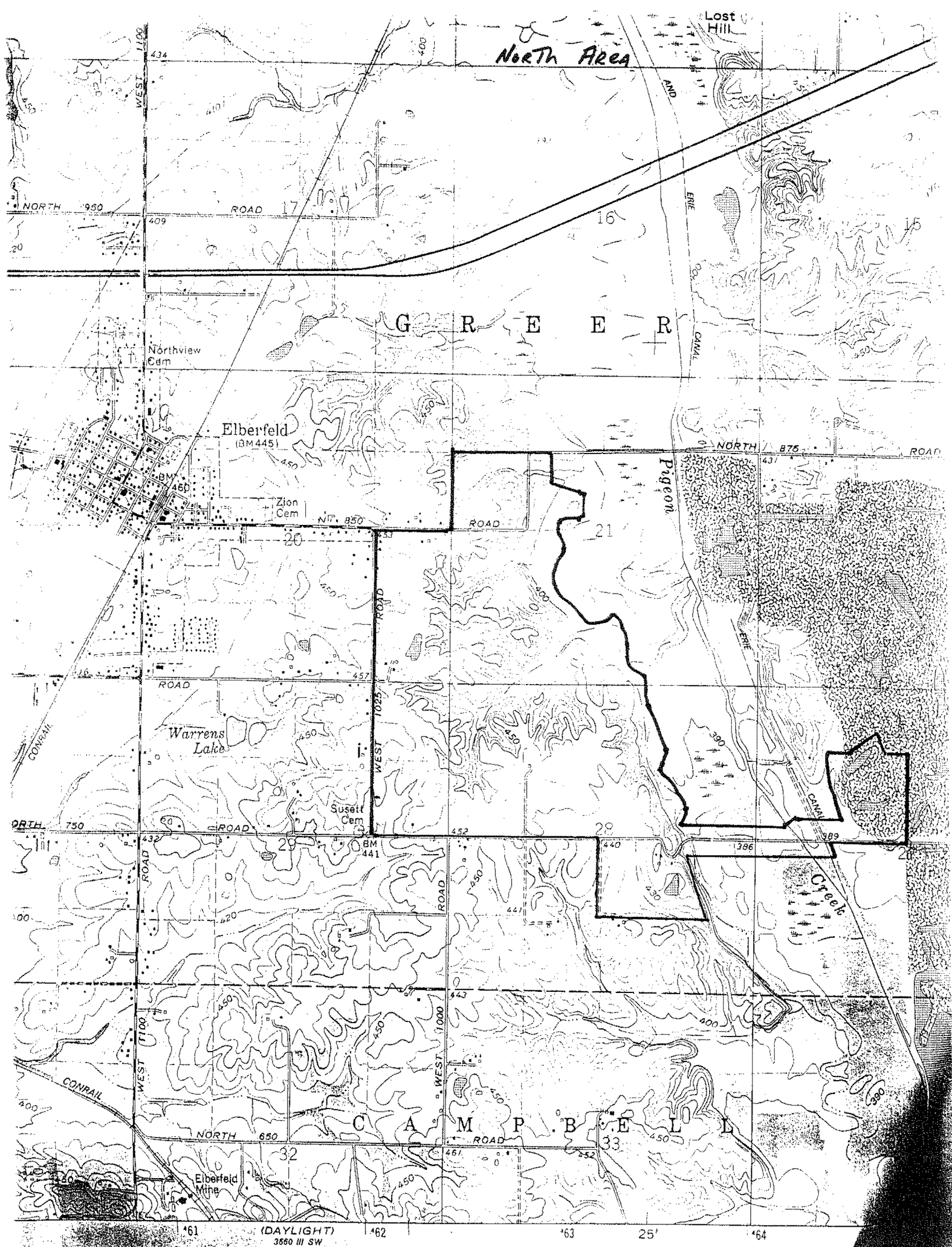
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WW-16J

Colonel Ralph Grieco
District Engineer
U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, Kentucky 40201-0059

Attention: Mr. Ron Sadri, Reference No. 199501367-rjs

Dear Colonel Grieco:

This is in response to your Pre-Construction Notice for activities proposed by Peabody Coal Company at their Millersburg II North operations near Pigeon Creek in Warrick County, Indiana. Peabody is requesting authorization under Nationwide Permit No. 21 for discharges into approximately 50 acres of Palustrine Forested (PFO) wetlands associated with their proposed surface coal mining activity.

We have reviewed the materials you provided and we believe that the proposal, as presently stated, does not meet the requirements for the Nationwide permit because (1) the applicant has not avoided or minimized adverse impacts to the maximum extent practicable, and (2) the applicant's proposed mitigation does not fully address the loss of functions and values that will occur as a result of the mining activity.

The Pigeon Creek corridor is a locally important aquatic resource that cannot easily be replaced. Therefore, impacts to the corridor should be avoided to the extent possible, and unavoidable impacts should be mitigated within the corridor. A major impact to the corridor is a levee shown in the materials you provided. It appears that adverse impacts to the corridor could be significantly reduced by relocating the levee to the toe of the slope. Unless the applicant can demonstrate that this action is totally impracticable, we recommend that you require the applicant to relocate the levee.

The applicant's proposed mitigation is insufficient to replace the functions and values of PFO wetland, especially in view of the location of the proposed off-site mitigation, time needed for restoration of PFO functions and values, and the uncertainty of success.

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Because of the value of the Pigeon Creek corridor, we recommend that the applicant make every effort to locate the mitigation area within the corridor. Given the size of the project area, it appears that the applicant could restore additional PFO wetlands within the corridor.

Since the time frame for PFO restoration is very long and because PFO restoration has had a high rate of failure, we recommend that you require a mitigation ratio of at least 2:1, which would require the applicant to produce 100 acres of PFO wetland. We recommend that at least 50 acres of this mitigation be within the Pigeon Creek corridor.

Because of inherent problems in successfully creating 100 acres of PFO wetlands, monitoring during the earthmoving and grading phases is critical. The proposed mitigation plan does not contain enough information to indicate that sufficient monitoring and corrective actions will take place at this time. Therefore, the mitigation plan should require additional monitoring by staff or other representatives of your office who are experienced in PFO restoration, and the permit should clearly state that the applicant will be required to take any corrective actions that you determine necessary as a result of the monitoring.

In summary, it appears that without further avoiding, minimizing, and mitigating adverse impacts, this project does not meet the requirements for the Nationwide permit. If these issues cannot be successfully addressed, we recommend that you require the applicant to apply for an individual Section 404 permit for the proposed activity.

My staff is available to discuss resolution of these issues with you and the applicant. If you have any questions, please call Mr. Thomas Glatzel of my staff at (312) 886-6678.

Sincerely,

Kevin M. Pierard, Chief
Watersheds and Nonpoint Source Programs Branch

cc: U.S. Fish and Wildlife Service, Bloomington IN
Indiana Dept of Environmental Management, Indianapolis IN
Indiana Department of Natural Resources, Indianapolis IN

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